

# **EXHIBIT ZZ**

WILLIAMS v. BIG PICTURE LOANS

GERBER, RICK

12/17/2018

Northwestern Court Reporters

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1 businesses that we felt comfortable with.  
 2 **Q And you concluded that they were?**  
 3 A In '12 and '13, I think, yes, we did.  
 4 **Q And you continued to do business with them moving**  
 5 **forward?**  
 6 A Uh-huh, yeah.  
 7 **Q That's a yes?**  
 8 A Yes.  
 9 **Q On page 1 of this report, there's a sub -- there are**  
 10 **a bunch of sub-bullets, but it's under the heading**  
 11 **Key Findings.**  
 12 I believe, Mr. Gerber, it's the fourth page of  
 13 the document itself.  
 14 A Okay. Oh, yeah.  
 15 **Q Under the second sub-bullet, the second sub-bullet**  
 16 **reads, Operation Choke Point has forced banks to**  
 17 **terminate relationships with a wide variety of**  
 18 **entirely lawful and legitimate merchants. The**  
 19 **initiative is predicated on the claim that providing**  
 20 **normal banking services to certain merchants creates**  
 21 **a, quote, reputational risk, end quote, sufficient**  
 22 **to trigger a federal investigation. Acting in**  
 23 **coordination with Operation Choke Point, bank**  
 24 **regulators labeled a wide range of lawful merchants**  
 25 **as, quote, high-risk, end quote, including coin**

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1 **dealers, firearms, ammunition sales, and short-term**  
 2 **lending. Operation Choke Point effectively transformed**  
 3 **this guidance into an implicit threat of a federal**  
 4 **investigation.**  
 5 **Did I read that correctly?**  
 6 A Yes.  
 7 **Q Leaving aside that I understand you didn't read this**  
 8 **report in realtime, do you agree with that statement?**  
 9 A I can't comment about coin dealers, firearms,  
 10 ammunition sales, et cetera. I'm not familiar with  
 11 any of those. And short-term lending --  
 12 **Q Sure.**  
 13 **Let's focus the question on the short-term lending**  
 14 **then. Would you agree with that statement in terms of**  
 15 **short-term lending?**  
 16 A That was my understanding of -- of what was going on,  
 17 yes.  
 18 **Q Why is that?**  
 19 A Again, going back to all of the different periodicals,  
 20 et cetera, that were floating around, and then my --  
 21 our research in regards to Tribal lending entities on  
 22 the internet in 2012 when we were being asked to take  
 23 on Lac Vieux Desert's Tribal lending entities, then  
 24 we -- that's when we read about Operation Choke Point,  
 25 et cetera. Yeah.

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1 **Q Were you ever contacted by any regulators regarding**  
 2 **LVD's Tribal lending entities?**  
 3 A I was never contacted by regulators. I was contacting  
 4 regulators to assure that they were comfort -- I  
 5 was contacting the FDIC to assure that they were  
 6 comfortable with what Chippewa Valley Bank was  
 7 doing and the procedures that we were using to  
 8 assure that we were complying with the normal banking  
 9 regulations.  
 10 **Q So let me unpack that just a little bit.**  
 11 **So what you're saying is the FDIC -- FDIC never**  
 12 **affirmatively contacted you about LVD, right?**  
 13 A I initiated all contact with the FDIC, yes.  
 14 **Q When did you first initiate contact with the FDIC?**  
 15 A Well, I'm going to guess a little bit, but I think it  
 16 was probably back when we initially did this, maybe  
 17 in 2012.  
 18 **Q Do you remember who it was at the FDIC you spoke to?**  
 19 A Well, I contacted our regional representatives --  
 20 **Q Do you --**  
 21 A -- out of Eau Claire and -- and Appleton.  
 22 **Q Do you remember who those folks are?**  
 23 A Scott Alexander and Colleen. I can't think of  
 24 Colleen's last name right now.  
 25 **Q What is Scott Alexander's position at the FDIC?**

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1 A I really don't know his position. He's -- he's a  
 2 compliance regulator.  
 3 **Q And do you remember what Colleen did?**  
 4 A Colleen is safety and soundness.  
 5 **Q What is the -- what is -- what is your understanding**  
 6 **of what Colleen was doing in that role?**  
 7 A Well, she overseen the regional offices regards to  
 8 the -- in regards to the -- her region's banks in  
 9 regards to safety and soundness examinations.  
 10 **Q And those folks from the local office put you in**  
 11 **touch with the Chicago office, is that right?**  
 12 A So after several requests by me, then there was a  
 13 meeting set up between Chippewa Valley Bank and Scott  
 14 and Colleen and then two individuals from the Chicago  
 15 office.  
 16 **Q Do you remember who the folks from the Chicago office**  
 17 **were?**  
 18 A I don't. And they came to Winter and met with me and  
 19 some of my staff members and went over the -- went  
 20 over -- we -- just a general discussion in regards to  
 21 Tribal lending entities and Chippewa Valley Bank's  
 22 involvement with them, but not any specific Tribal  
 23 lending entity.  
 24 **Q Who were the folks from Chippewa Valley Bank that were**  
 25 **in that meeting, if you remember?**

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- 1 A Larry Johnson, Randy Somerville. There were other  
2 folks there. I just don't -- I -- I don't remember  
3 who all was in attendance. There was five or six,  
4 probably, people.
- 5 **Q I think you testified about Mr. Somerville earlier, but  
6 who's Larry Johnson?**
- 7 A Larry Johnson is the chairman of the board of Chippewa  
8 Valley Bank.
- 9 **Q What does Mr. Johnson do in his capacity as chairman  
10 of the Bank?**
- 11 A Well, he's the chairman of our directors, so he -- he  
12 conducts our board of director meetings.
- 13 **Q And you said you spoke with the FDIC about Tribal  
14 lending entities and your relationship with them.  
15 Do you remember any of the specifics of that  
16 conversation?**
- 17 A We expressed our concern that we wanted to help the  
18 local Tribes that we dealt with on a regular basis,  
19 so, in other words, we were dealing with our customers,  
20 already established customers, and we wanted to help  
21 provide them further banking services if the FDIC  
22 didn't object or feel that we were violating any  
23 federal banking regulations.
- 24 **Q And did the FDIC object?**
- 25 A Not on a legal basis. We were told that -- and I can

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- 1 say this because I was given permission to repeat this  
2 to our local Tribes, that they felt it probably created  
3 great reputational risk for Chippewa Valley Bank.
- 4 MR. ALBANESE: I'm just going to not stop  
5 the questioning, but just state that all the  
6 statements he's describing the FDIC made are  
7 hearsay, and we would object to their admission  
8 at trial, but I understand this is a deposition.
- 9 MR. WITSCH: Objection's noted.
- 10 **Q (By Mr. Witsch, continuing) You said that you were  
11 given permission to talk to the Tribes about that?**
- 12 A We were given permission to -- to tell the Tribes that  
13 the FDIC was concerned about Chippewa Valley Bank's  
14 reputational risk.
- 15 **Q Did you contact the Tribes about that?**
- 16 A I did immediately, yes.
- 17 **Q Did you talk to any of the Tribes beforehand? Let  
18 me -- let me clarify that question just a little  
19 bit.**
- 20 **Did you talk to any -- anyone from any of the  
21 Tribes before you met with the FDIC?**
- 22 A In regards to us having a meeting with the FDIC?
- 23 **Q Correct.**
- 24 A Not that I'm aware of --
- 25 **Q So you didn't --**

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- 1 A -- or not that I remember.
- 2 **Q You didn't speak with Chairman Williams beforehand?**
- 3 A I don't remember having to. I can't say that with  
4 complete certainty.
- 5 **Q Did you communicate to the Tribes that the FDIC was  
6 of the view that what the Tribes were doing was  
7 lawful?**
- 8 A Could you say that again?
- 9 **Q Yeah.**
- 10 **When you went and spoke with the Tribes after  
11 your meeting with the FDIC, did you communicate to  
12 them that the FDIC viewed what they were doing as  
13 legal?**
- 14 A I did not. The FDIC I don't think commented on what  
15 was legal and what wasn't. What they commented on  
16 for the most part was is the reputational risk.
- 17 MR. WITSCH: This is going to be No. 16.  
18 (Deposition Exhibit No. 16 was marked for  
19 identification.)
- 20 **Q (By Mr. Witsch, continuing) Mr. Gerber, I've just  
21 marked a document as No. 16. It's an email from the  
22 Bank's files.**
- 23 **And in the bottom email on the first page here,  
24 it's an email from Matt Martorello to you dated  
25 September 4th, 2013.**

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- 1 **Mr. Martorello writes to you, Hi Rick, look --  
2 looking forward to hearing how your meeting with the  
3 FDIC went today, and any resulting effect on Red Rock,  
4 slash, Duck Creek bank accounts, potential for RCC  
5 processing, and maybe -- maybe even stepping into the  
6 ACH business.**
- 7 **Did I read that correctly?**
- 8 A Yes.
- 9 **Q And you respond to Mr. Martorello on September 5th,  
10 2013 -- sorry. Later on on September 4th, 2013, the  
11 FDIC delivered a different message to CVB today in  
12 that TLEs are not illegal and that they will not be  
13 exercising any moral values, only legal matters. All  
14 good news. They backed away from any intimidating  
15 stance in what CVB is doing completely. With that  
16 said, they stated that they would give CV -- CVB  
17 some outline as to how we can transact businesses --  
18 sorry. How we can transact business and feel somewhat  
19 comfortable. They did express a concern with ACH  
20 processing and risks associated with it. I am not  
21 sure CVB's board will allow us to do ACH clearing.  
22 I am confident we can continue with our present  
23 business.**
- 24 **Did I read that correctly?**
- 25 A Yes.

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